

REMARKS

The Examiner has rejected all pending claims 1-38, 41-44, 51-53, and 67-77 due to an allegedly defective reissue declaration as originally filed with the reissue application on January 26, 2001. The Examiner has taken the position that the declaration fails to include a statement regarding at least one specific error in the original claims, as well as how the new claims rectify this error, specifically pointing out which claim(s) rectify this error.

The declaration filed for the present reissue application is not defective in the manner asserted by the Examiner. Applicants' reissue declaration unequivocally states:

The invention *as claimed* was unnecessarily limited. For example, new claims have been added *to obviate the requirement that the cartridge include a means for substantially preventing proximal movement of the shield unless the cartridge is mounted to a handle.* (Emphasis added)

This statement points out an error in the original claims that existed in the invention "as claimed." Since every independent claim in the original patent (*i.e.*, independent claims 1, 26, and 28) included a limitation regarding the means to substantially prevent inadvertent proximal movement of the shield, each and every claim in the patent included this positively recited element. Therefore, the declaration referring to the invention "as claimed" having been unnecessarily limited was sufficiently specific to point out the errors in the original patent claims.

The Examiner contends that "[a]ny error in the claims must be identified by reference to the specific claims and the specific claim language wherein lies the error" under MPEP § 1414 (II)(C). Here, Applicants have surely identified specific erroneous claim language by referring to a particular claim limitation that is present in all of the claims, and therefore in the "invention as claimed". It would be redundant to require Applicants to specifically list that the error is contained in "claims 1-29" when the phrase "[t]he invention as claimed" has the same meaning.

Applicants have satisfied the following standard of MPEP § 1414 (II)(B): "In identifying the error, it is sufficient that the reissue oath/declaration identify a single word, phrase, or expression in the specification or in an original claim, and how it renders the original patent wholly or partly inoperable or invalid." Applicants have identified a particular claim

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limitation that unnecessarily limited the invention and specified that it is contained in the entire set of original claims. Since every original claim was limited by this element and the declaration noted that new claims were added to "obviate" that element, the declaration is sufficiently clear that the new reissue claims rectified this error by eliminating that element. Further, although the Examiner has required a statement in the declaration regarding the specific action taken to rectify the error, it should be noted that Applicants are not required to specifically state the corrective action taken to rectify the error. See 37 C.F.R. § 1.175; MPEP § 1414 (II)(B). In any event, the reissue declaration does state that "new claims have been added to obviate the requirement that the cartridge include a means..." Applicant submits that such statement sets forth the corrective action taken, in that new claims are presented obviating this previously claimed feature. For these reasons, the declaration is not defective in the manner asserted by the Examiner.

In view of the foregoing, Applicants respectfully request that the reissue declaration be reconsidered, that the claim rejections based on the allegedly defective declaration be withdrawn, and that the application be allowed.

In the event that the Examiner maintains the requirement for a new declaration, it is requested that the Examiner contact Applicants' undersigned representative by telephone prior to issuance of a further action.

Respectfully submitted,

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